PCIA Personal Communications Industry Association

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April 10, 1996

By Hand

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554
STOP CODE: 1170

Re: Ex Parte Communication In
CC Docket No. 94-54

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, I am filing an original and one copy of this letter to report an oral ex parte communication in the above-referenced proceeding. On behalf of the Personal Communications Industry Association ("PCIA"), Robert Cohen and I met with David Furth, Acting Chief of the Commercial Wireless Division and members of his staff, Sandra Danner and Jane Halprin, yesterday to discuss issues raised in PCIA's comments in the referenced proceeding. Attached are materials that were reviewed and discussed during the meeting.

Due to delays in returning to PCIA's office following the meeting, this filing is being made the following day. Please call me if you have any questions regarding this notice.

Respectfully submitted,

Robert L. Hoggarth/lc

Robert L. Hoggarth
Director, Regulatory Relations

Enclosure
cc: Sandra Danner
David Furth
Jane Halprin

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PCS Roaming: *Critical to the Success of CMRS Competition.*

As the FCC has recognized, the ability of CMRS operators to "roam" is of critical importance to a "competitive CMRS marketplace". *Second Notice of Proposed Rulemaking,* 60 Fed Reg. 20949, ¶¶ 54, 58 (April 28, 1995). However, the Commission has neglected to *require* cellular companies to provide roaming capabilities for PCS providers -- opting instead to rely on "marketplace forces" and to "monitor the development of roaming service and to police actively any denials of reasonable requests for roaming agreements". *Id.* at ¶ 58. PCIA has become convinced by the record generated in response to the *Second Notice* and by marketplace developments that it is crucial for the Commission to require PCS-to-cellular roaming on the same basis as the Commission requires cellular-to-cellular roaming.

Background.

Historically, the FCC has required cellular companies to allow cellular-to-cellular roaming. In fact, that policy is now reflected in the agency's rules: "[c]ellular system licensees must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing, including roamers, while such subscribers are located within any portion of the authorized cellular geographic service area . . . where facilities have been constructed and service to subscribers has commenced." 47 C.F.R .§ 22.901.

Accordingly, it is simply not true, as suggested by some parties,[1] that cellular roaming appeared solely through market forces without FCC involvement.

While the FCC so far has declined to adopt similar rules for PCS-to-cellular roaming, the Commission has nonetheless recognized the pivotal role that roaming will play in the acceptance and success of PCS.

In fact, in its *Second Notice* the Commission stated that "[r]oaming capability is an increasingly important feature of mobile telephone communications" -- one that the Commission "should take any steps necessary to support". *Second Notice*, ¶ 54.

[1] *Comments of BellSouth* at 5.

What's the Market Incentive of Incumbent Cellular Providers?

In tentatively declining to require cellular companies to offer PCS roaming, the FCC appears to believe that market incentives will ensure that cellular incumbents will provide roaming capabilities to PCS systems -- a view shared by a number of cellular incumbents themselves.

"Each cellular operator may find it to be economically beneficial to deny roaming or to charge higher prices for roaming in certain cellular MSAs to make PCS less desirable to consumers who place a high value on roaming."

-- Dr. Jerry A. Hausman, McDonald Professor of Economics, MIT.

But exactly what this incentive will be is not clear. As BellSouth says, cellular incumbents already enjoy the benefits of an "existing nationwide seamless cellular roaming system".[2] Whatever incentive cellular companies had to permit cellular-to-cellular roaming (encouraged, of course, by a functional FCC requirement), they gain nothing more from providing this same roaming capability to potential PCS competitors.

Lack of PCS Roaming Capability Provides Incumbent Cellular Companies with a Marketing Pitch -- Not an Incentive to Permit PCS Roaming.

Whatever economic theories can be presented regarding cellular companies' incentives, the best proof of the real incentives can be found in cellular companies' behavior when confronted with actual competition from PCS operators. That behavior is not encouraging to the development of CMRS competition.

The recent introduction of PCS competition in the Washington/ Baltimore market has been accompanied by substantial advertising campaigns -- both by the nascent PCS provider and by incumbent cellular providers. The PCS provider's advertising invariably talks about price, additional telecommunications features, and signal clarity.

However, virtually without exception, advertising by incumbent cellular providers focuses almost exclusively on the lack of roaming capability by PCS operators.

[2] *Comments of BellSouth* at 5.

Clearly, while incumbent cellular providers may offer economic theories about how "foregone profit opportunities" will ensure that PCS providers get roaming capabilities, the behavior of those cellular providers in the market is quite different. As Dr. Jerry A. Hausman, McDonald Professor of Economics at MIT, stated in this proceeding, theories about "foregone profit opportunities" fail "to consider the increase in revenue that a cellular provider would gain in a region if PCS is made less attractive by its inability to provide out of region roaming services".[3] Whatever incumbent cellular companies may be telling the FCC, their behavior in the marketplace tells a quite different story.

"How [do] Sprint Spectrum wireless users make calls outside the greater Washington/Baltimore area[?] It's simple, if they have a quarter. Because once they leave Sprint's very limited service area, their wireless phone can't make a call."

-- Bell Atlantic NYNEX Ad, *Washington Post*, 12/19/95

[3] *Ex Parte* Affidavit filed by Pacific Telesis Mobile Services and Pacific Mobile Services at 7-8.

PCS-to-Cellular Roaming Is Technically Feasible and Can Be Implemented Without Imposing a Burden on Cellular Incumbents.

One of the apparent fears of requiring PCS-to-cellular roaming is that cellular companies (and ultimately users) will wind up footing the bill to implement technical features for the benefit of PCS.

But this need not be the case at all. Both Pacific Bell Mobile Services and APC have proposed roaming requirements that will put the burden on PCS operators. Under these plans, PCS operators will bear the burden of distributing dual-mode, dual frequency handsets -- due to become available in the second quarter of 1996 -- to PCS customers. Calls made on such handsets will appear no different to the cellular network from any other cellular call. Accordingly, handling these calls will require no additional equipment investment and should impose no costs for the incumbent cellular provider beyond those imposed by cellular roaming agreements.

Section 22.901 Alone Does Not Appear to Be the Answer.

Some parties contend that Section 22.901 is "sufficiently broad to foster PCS roaming services without imposing undue costs upon the CMRS industry".[4] Yet, it is not apparent at all from the face of Section 22.901, which deals with cellular customers, that the rule will afford protection from failure of cellular companies to offer roaming to PCS customers. As Bell South has already noted, a PCS customer, even one with a dual-mode phone, is simply not a "'*cellular* customer in good standing'".[5] Accordingly, if the Commission's policy to promote competition in the mobile voice marketplace is to be realized, it must affirmatively state that the roaming policy embodied in Section 22.901 is intended to apply to PCS providers and customers.

What Is the Answer?

As the FCC has recognized, roaming capabilities are critical to the development not only of PCS but of the mobile "network or networks" envisioned by the Commission. The mounting evidence of the marketplace illustrates that incumbent cellular providers have the incentive and ability to deny PCS operators roaming capabilities. Accordingly, PCIA believes that the FCC should simply require that incumbent cellular operators offer roaming capabilities to PCS operators on a non-discriminatory basis. In essence, PCIA asks that the Commission apply its long-standing cellular-to-cellular roaming policy to PCS providers.

Such a policy would not impose additional costs on the cellular industry. It would not require the technically impossible of cellular incumbents. As in the cellular industry, it would not require a heavy regulatory hand in private negotiations. But most fundamentally, it would help fulfill the competitive promise offered by PCS providers.

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[4] *Comments of CTIA* at 19-20.

[5] *Comments of BellSouth* at 5.